

SEP 27 2018

LAW OFFICE OF  
DAVID J. WEINSOFF  
138 Ridgeway Avenue  
Fairfax, California 94930  
tel. 415-460-9760  
david@weinsofflaw.com

***Via Certified Mailing – Return Receipt***

September 19, 2018

Mr. Kenzo Tsujimoto, Owner  
Mr. David Abreu, Vineyard Manager  
Kenzo Estate, Inc.  
3200 Monticello Road  
Napa, CA 94558

**Re: Notice of Violations and Intent to File Suit Under the Federal Water  
Pollution Control Act (Clean Water Act)**

Dear Mr. Tsujimoto and Mr. Abreu:

**NOTICE OF ALLEGED VIOLATIONS**

This Notice is provided on behalf of California River Watch (“River Watch”) in regard to violations of the Clean Water Act (“CWA” or “Act”), 33 U.S.C. § 1251 *et seq.*, that River Watch believes are occurring at the winery owned and operated by Kenzo Estate, Inc. (“Winery”) located at 3200 Monticello Road in Napa, California. Notice is being sent to you as the responsible owners, operators, and managers of the Winery and real property. This Notice addresses the violations of the CWA, including violation of the new terms of the General California Industrial Storm Water Permit, and the unlawful discharge of pollutants from the Winery indirectly into Suisun Creek, a navigable water of the United States which is listed as impaired under CWA § 303(d).

CWA § 301(a), 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant into waters of the United States unless such discharge is in compliance with various enumerated sections of the Act. Among other things, Section 301(a) prohibits discharges not authorized by, or in violation of, the terms of an individual National Pollutant Discharge Elimination System (“NPDES”) permit or a general NPDES permit issued pursuant to CWA § 402(p), 33 U.S.C. § 1342. CWA § 402(p), 33 U.S.C. § 1342(p) establishes a framework for regulating storm water discharges under the NPDES program. States with approved NPDES permitting programs are authorized under this section to regulate storm water discharges through permits issued to dischargers and/or through the issuance of a single, statewide general permit applicable to all storm water dischargers. Pursuant to CWA § 402, the Administrator of the U.S. Environmental Protection Agency (“EPA”) has authorized California’s State Water Resources Control Board (“SWRCB”) to issue NPDES permits including general NPDES permits in California.

The SWRCB elected to issue a statewide general permit for industrial dischargers and issued NPDES Permit No. CAS000001, SWRCB Order No. 92-12-DWQ (the “General Permit”) on or about November 19, 1991, modified it on or about September 17, 1992, reissued it on or about April 17, 1997, and amended it significantly on April 1, 2014 (effective July 1, 2015), pursuant to CWA § 402(p). In order to discharge storm water lawfully in California, industrial dischargers must comply with the terms of the General Permit or have obtained an individual NPDES permit and complied with its terms.

CWA § 505(b) requires a citizen to give notice of the intent to file suit sixty (60) days prior to the initiation of a civil action under Section 505(a) of the Act. Notice must be given to the alleged violator, the EPA, and the state in which the violations occur. As required by the CWA, this Notice provides notice of the violations that River Watch contends have occurred and continue to occur at the Winery. Consequently, Kenzo Estate, Inc. (the “Discharger”) is placed on formal notice by River Watch that after the expiration of sixty (60) days from the date of this Notice, River Watch will be entitled to bring suit in the United States District Court against the Discharger for continuing violations of an effluent standard or limitation, NPDES permit condition or requirement, or Federal or State Order issued under the CWA (in particular, but not limited to, CWA § 301(a), § 402(p), and § 505(a)(1), as well as the failure to comply with requirements set forth in the California Code of Federal Regulations and the San Francisco Bay Regional Water Quality Control Board (“RWQCB”) Water Quality Control Plan or “Basin Plan.”

The CWA requires that any notice regarding an alleged violation of an effluent standard or limitation or of an order with respect thereto shall include sufficient information to permit the recipient to identify the following:

**1. The Specific Standard, Limitation, or Order Alleged to Have Been Violated.**

To comply with this requirement, River Watch notices the Discharger of ongoing violations of the substantive and procedural requirements of CWA § 402(p) and violations of NPDES Permit No. CAS000001, SWRCB Order No. 92-12-DWQ as amended by Order No. 97-03-DWQ and Order No. 2014-0057-DWQ (the “General Permit”) relating to recycling services and operations taking place at the Winery.

The Discharger, rather than seeking coverage under an individual NPDES permit, filed a Notice of Intent (“NOI”) agreeing to comply with the terms and conditions of the General Permit. The SWRCB approved the NOI on or about June 24, 2015 and the Discharger is assigned Waste Discharger Identification (“WDID”) number 2 28I025665. River Watch, on the basis of eye-witness reports and records publicly available, and/or records in the possession and control of the Discharger, contends that in the continuing winery operations taking place at the Winery, the Discharger has failed and is failing to comply with the strict terms and conditions of the General Permit – specifically the requirements governing sampling and analysis, the foundation upon which the Discharger can prepare and implement effective Best Management Practices (“BMPs”) in its Storm Water Pollution Prevention Plan (“SWPPP”) for the Winery, ensuring the elimination of all non-authorized storm water discharges.

Compliance with these General Permit requirements is central to the effectiveness of the General Permit program. River Watch alleges the Discharger has failed and is failing to comply with the General Permit's annual reporting requirements for reporting years 2015-2016, 2016-2017, and 2017-2018. The General Permit in effect beginning July 1, 2015 (Order No. 2014-0057-DWQ) revised significantly the reporting requirements for industrial facilities such as the Winery. Under the new General Permit, the Discharger is required to comply with all of the following:

- “Collect and analyze storm water samples from two (2) Qualifying Storm Events (“QSEs”) within the first half of each reporting year (July 1 to December 31), and two (2) QSEs within the second half of each reporting year (January 1 to June 30)” (*see* General Permit Section XI.B.2).

River Watch, following review of the available sampling data provided on the SWRCB's SMARTs reporting database, alleges the Discharger failed to comply with this requirement by sampling and analyzing for none (0) of the required four (4) samples during the 2015-2016 Annual Reporting Year, for only two (2) of the required four (4) samples during the 2016-2017 Annual Reporting Year, and for only (2) of the required four (4) samples during the 2017-2018 Annual Reporting Year.<sup>1</sup>

- “Analyze all collected samples for the following parameters: “(a) Total suspended solids (TSS) and oil and grease (O&G); (b) pH ...; (c) Additional parameters identified by the Discharger on a facility-specific basis that serve as indicators of the presence of all industrial pollutants identified in the pollutant source assessment ...” (*see* General Permit Section XI.B.6.a.-c.).

---

<sup>1</sup> The Discharger's 2015-2016 Annual Report, certified by Office Manager Mischelle Haas, states that the Discharger conducted no monthly visual observations (Question #1), conducted no sampling event visual observations (Question #2), failed to sample any of the required Qualifying Storm Events (Question #3), did not conduct the one annual evaluation (Question #11), and failed to maintain records on-site (Question #12). Each failure to comply with the General Permit, a separate violation of the General Permit, is explained in the “Summary of Explanations” as a “miscommunication” with or within “the company.”

The Discharger's 2016-2017 Annual Report, certified by Office Manager Mischelle Haas, states that the Discharger did “sample the required number of Qualifying Storm Events for the Winery during the reporting year for all discharge locations, in accordance with [General Permit] Section XI.B” (Question #3). The Annual Report requires, in the event the required number of Qualifying Storm Events are not sampled, that a “Summary of Explanation” must be provided in an Attachment 1. There is no explanation in the Annual Report providing an Explanation for the insufficient number of samples reported on the SMARTs reporting database.

The Discharger's 2017-2018 Annual Report was not available on the SMARTs database prior to the filing and service of this Notice.

River Watch, following review of the “Analytical Reports” of the storm water samples reported by the Discharger, alleges the Discharger fails to reveal monitoring and analysis of the full range of pollutants required by the General Permit. The Reports provide sampling results for Oil and Grease, Total Suspended Solids, and pH (with violations identified in samples taken on March 24 and April 7, 2017, confirmed in the “Level 1 ERA Report” prepared by the Discharger as required by SWPPP Section 1.9), but fails to provide sampling results for all the “additional parameters identified by the Discharger on a facility-specific basis that serve as indicators of the presence of industrial pollutants identified in the pollutant source assessment ...” (General Permit Section XI.B.6.c). In its June 29, 2015 SWPPP, the Discharger identifies a broad range of “industrial materials” and “potential pollutant sources” (see SWPPP Section 2.3.1, and Table 2.1 which is attached to this Notice as Exhibit A and incorporated herein by reference). River Watch alleges the Discharger’s failure to provide full sampling results for all of these parameters is a violation of the General Permit.

## **2. The Activity Alleged to Constitute a Violation.**

Full compliance with the mandates of the General Permit is not a mere statutory and regulatory exercise. The lands in the Suisun Creek watershed produce a harvest of unparalleled bounty that draws acclaim worldwide. Failing to care for this critical environment as alleged in this Notice is a violation not only of law, but an abrogation of the trust we demand of Napa County landowners. The Winery appears to support this, as it proclaims on its website - “Kenzo Estate is unusual in Napa Valley for the vast expanse of wilderness it encompasses and Kenzo Estate’s owner, Kenzo Tsujimoto, has a strong desire to share his love for this unique and extraordinary property with guests ... Kenzo Estate is the custodian of watersheds originating on the property and draining East, West, and South. Protected within this preserve are rain and spring-fed reservoirs, vernal pools, streams, and diverse forests of conifer, oak and manzanita. Wild boar, coyotes, mountain lions, deer, turkeys and bobcats linger in the wilderness ... Here is the convergence of nature and great winegrowing” (see <http://www.kenzoestate.com/estate/terroir.php>; September 11, 2018).

The Discharger’s operations, detailed in Section 2.1.2. (*Facility Operations*) in the current SWPPP, “consist of all activities required to produce, store, and distribute wine. A list of specific industrial activities is provided below:

- Shipping and Receiving of Grapes
- Dumpster staging area for general trash and recycling
- Production, storage, and bottling or wine
- Loading and unloading of nitrogen, SO<sub>2</sub>, Freon, tartaric acid and other chemicals essential to wine production
- Disposal and removal of spent grape skins, grape stems, and diluted grape juice”.

The Winery is classified on the NOI as SIC Code 2084 (“Wines, Brandy, and Brandy Spirits”), triggering monitoring and sampling for the full range of mandated and “additional parameters” listed above. Industrial operations at the Winery are conducted both indoors and outdoors where they are subject to rain events. Because there is no public record of a SWRCB or RWQCB exemption from the collecting and analyzing of the range of pollutants identified in



Table 2.1 of the SWPPP, without implementing the full range of required sampling and analysis there is no accurate measure by which to determine whether required BMPs under General Permit Section X are both implemented at the Winery and effective to ensure no unlawful discharge(s) of the pollutants identified above from the Winery discharge to Suisun Creek.

Note that in addition to the pollution controls set forth in the General Permit, the RWQCB has established water quality standards applicable to facilities such as the Winery. The RWQCB's Basin Plan includes both a narrative toxicity standard and a narrative oil and grease standard, providing that "[w]aters shall not contain suspended material in concentrations that cause nuisance or adversely affect beneficial uses." The Basin Plan establishes limits on metals, solvents, pesticides, and other hydrocarbons.

**3. The Person or Persons Responsible for the Alleged Violation.**

The entity responsible for the alleged violations is Kenzo Estate, Inc., referred to in this Notice as the Discharger.

**4. The Location of the Alleged Violation.**

The location of the various violations is the permanent address of the Winery at 3200 Monticello Road in Napa, California, including the waters of Suisun Creek – a water of the United States.

**5. The Date or Dates of Violation or a Reasonable Range of Dates During Which the Alleged Activity Occurred.**

The range of dates covered by this Notice is from September 19, 2015 to September 19, 2018. River Watch will from time to time update this Notice to include any violations of the CWA which occur after the range of dates covered by this Notice. Some of the violations are continuous in nature, therefore each day constitutes a violation.

**6. The Full Name, Address, and Telephone Number of the Person Giving Notice.**

The entity giving this Notice is California River Watch, an Internal Revenue Code § 501(c)(3) nonprofit, public benefit corporation organized under the laws of the State of California, with headquarters located in Sebastopol, California. River Watch's mailing address is 290 South Main Street, #817, Sebastopol, CA 95472. River Watch is dedicated to protecting, enhancing and helping to restore surface water and groundwaters of California including coastal waters, rivers, creeks, streams, wetlands, vernal pools, aquifers and associated environs, biota, flora and fauna, and to educating the public concerning environmental issues associated with these environs.

River Watch may be contacted via email: [US@ncriverwatch.org](mailto:US@ncriverwatch.org), or through its attorneys. River Watch has retained legal counsel with respect to the issues set forth in this Notice. All communications should be directed to:

David Weinsoff, Esq.  
Law Office of David Weinsoff  
138 Ridgeway Avenue  
Fairfax, CA 94930  
Tel. 415-460-9760  
Email: [david@weinsofflaw.com](mailto:david@weinsofflaw.com)

### **REMEDIAL MEASURES REQUESTED**

River Watch believes that implementation of the following remedial measures is necessary in order to bring the Discharger into compliance with the CWA and reduce the biological impacts from its non-compliance upon public health and the environment surrounding the Winery:

1. Compliance with the sampling and monitoring requirements for the full range of pollutants including, but not limited to:
  - pH, total suspended solids, total organic carbon or oil & grease (the standard pollutants); and
  - all “Potential Pollutant Sources” listed in Table 2.1 in the Discharger’s current SWPPP for the Winery.
2. A more thorough annual assessment of the need for analytical monitoring of the pollutants as required in the Annual Report “Question Information” #8.
3. Preparation of a completed SWPPP Table 5.5 to identify each “Pollutant Source Assessment constituent.”
4. Preparation of a report by a licensed biologist on the presence of any federal or state-listed threatened or endangered species, and/or “critical habitat” at the Winery.
5. Preparation and submittal to the RWQCB of a “Reasonable Potential Analysis” for the Winery and its industrial operations.
6. Implementation of updates to the Discharger’s SWPPP as required under Section 1.7 that include, but are not limited to, additional BMPs necessary to address any violations of the General Permit identified by required sampling and analysis.

### **CONCLUSION**

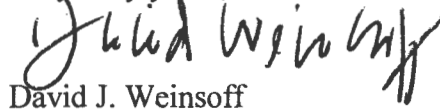
The violations set forth in this Notice effect the health and enjoyment of members of River Watch who reside and recreate in the affected community. Members of River Watch may use the affected watershed for recreation, sports, fishing, swimming, hiking, photography, nature walks and/or the like. Their health, use, and enjoyment of this natural resource is specifically impaired by the Discharger’s alleged violations of the CWA as set forth in this Notice.

The General Permit, in the very first "Standard Condition," states: "Dischargers shall comply with all standard conditions in this General Permit. Permit noncompliance constitutes a violation of the Clean Water Act and the [California] Water Code and is grounds for enforcement action and/or removal from General Permit coverage" (see General Permit Section XXI.A). The gravity of ensuring that the Annual Reports submitted to the State of California are complete and accurate is highlighted by the General Permit requirement that the person signing and certifying the document certifies that "to the best of my knowledge and belief, the information submitted is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations" (see General Permit Section XXI.L).

CWA §§ 505(a)(1) and 505(f) provide for citizen enforcement actions against any "person," including individuals, corporations, or partnerships, for violations of NPDES permit requirements and for un-permitted discharges of pollutants. 33 U.S.C. §§ 1365(a)(1) and (f), §1362(5). An action for injunctive relief under the CWA is authorized by 33 U.S.C. §1365(a). Violators of the Act are also subject to an assessment of civil penalties of up to \$53,484.00 per day/per violation pursuant to Sections 309(d) and 505 of the Act, 33 U.S.C. §§ 1319(d), 1365. See also 40 C.F.R. §§ 19.1-19.4. River Watch believes this Notice sufficiently states grounds for filing suit in federal court under the "citizen suit" provisions of CWA to obtain the relief provided for under the law.

The CWA specifically provides a **60-day** "notice period" to promote resolution of disputes. River Watch strongly encourages the Discharger to contact counsel for River Watch within **20 days** after receipt of this Notice to: (1) initiate a discussion regarding the allegations detailed in this Notice, and (2) set a date for a site visit to the Winery. In the absence of productive discussions to resolve this dispute, or receipt of additional information demonstrating the Discharger is in compliance with the strict terms and conditions of the General Permit, River Watch will have cause to file a citizen's suit under CWA § 505(a) when the 60-day notice period ends.

Very truly yours,

  
David J. Weinsoff

DW:lm

Enclosure – Exhibit A

### **Service List**

Andrew Wheeler, Acting Administrator  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, N. W.  
Washington, D.C. 20460

Michael Stoker, Regional Administrator  
U.S. Environmental Protection Agency  
Pacific Southwest, Region 9  
75 Hawthorne Street  
San Francisco, CA 94105

Eileen Sobeck, Executive Director  
State Water Resources Control Board  
P.O. Box 100  
Sacramento, CA 95812-0100

Mischelle Haas-Martin, Registered Agent  
Kenzo Estate, Inc.  
3200 Monticello Road  
Napa, CA 94558



# **INDUSTRIAL ACTIVITIES STORMWATER POLLUTION PREVENTION PLAN**

for

Kenzo Estate

**Facility Address:**

3200 Monticello Road

Napa, CA 94558

**Waste Discharge Identification (WDID):**

TBD

**Exceedance Response Action (ERA) Status:**

Baseline

**Legally Responsible Person [LRP]:**

Kenzo Estate

3200 Monticello Road, Napa CA 94558

Mischelle Haas

(707) 256-1547]

**Duly Authorized Representative:**

Marc Nanes

**Prepared for:**

Kenzo Estate

3200 Monticello Road, Napa CA 94558

**SWPPP Prepared by:**

Summit Engineering, Inc.

463 Aviation Blvd., Suite 200

Santa Rosa, CA 95403

**SWPPP Preparation Date**

June 29, 2015

**Table 2.1 Industrial Activities and Associated Materials**

<b>Industrial Activity</b>	<b>Associated Industrial Materials</b>	<b>Material Quantity</b>	<b>Material Physical Characteristics</b>	<b>Material Location</b>	<b>Associated Pollutants</b>	<b>Stormwater Exposure Pathway</b>
Grape Harvest	Grapes	282 tons	solid/liquid	red crush pad	Organics and Sediment	Loading and unloading and processing on exterior crush pad
Grape Harvest	Grapes	131 tons	solid/liquid	white crush pad	Organics and Sediment	Transported during dry weather in water tight bins
Grape Harvest	Spent Grapes, Seeds Stems	153 tons	solid/liquid	Abutting retaining wall near cave entrances	Organics and Sediment	Loading and unloading, exposed exterior storage area, drains to diversion valve
Winemaking	Wine	65,100 gallons	liquid	cave/barrel building	Organics and Sediment	Shipping and receiving within exterior red wine crush area
Winemaking	Yeast Hulls	20kg	solid	red winery nutrient table	Organics and Sediment	Shipping and receiving within exterior red wine crush area
Winemaking	6% SO <sub>2</sub>	200gal	liquid	red winery	Organics and Sediment	Shipping and receiving within exterior red wine crush area
Winemaking	Nitrogen	TBD	gas	red winery chemical storage	Organics and Sediment	Shipping and receiving within exterior red wine crush area

**Table 2.1 Industrial Activities and Associated Materials**

<b>Industrial Activity</b>	<b>Associated Industrial Materials</b>	<b>Material Quantity</b>	<b>Material Physical Characteristics</b>	<b>Material Location</b>	<b>Associated Pollutants</b>	<b>Stormwater Exposure Pathway</b>
Sanitation	Sodium Percarbonate	2000lbs	Solid granule	red winery storage room	Sediment	Shipping and receiving within exterior red wine crush area
Sanitation	Citric Acid	2000lbs	Solid granule	red winery storage room	Organics, Acute Toxins, etc.	Shipping and receiving within exterior red wine crush area
Sanitation	Peracetic Acid	75gal	liquid	red winery chemical storage	Organics, Acute Toxins, acid, etc.	Shipping and receiving within exterior red wine crush area
Winemaking	Yeast	200lbs	Solid granule	red winery nutrient table	Organics and Sediment	Shipping and receiving within exterior red wine crush area
Winemaking	Yeast Nutrient	250lbs	Solid granule	red winery nutrient table	Organics and Sediment	Shipping and receiving within exterior red wine crush area
Winemaking	Tartaric Acid	300lbs	Solid granule	red winery nutrient table	Organics, Acute Toxins, acid, etc.	Shipping and receiving within exterior red wine crush area
Winemaking	Diammonia Phosphate	300lbs	Solid granule	red winery nutrient table	Organics, Acute Toxins, etc	Shipping and receiving within exterior red wine crush area

**Table 2.1 Industrial Activities and Associated Materials**

<b>Industrial Activity</b>	<b>Associated Industrial Materials</b>	<b>Material Quantity</b>	<b>Material Physical Characteristics</b>	<b>Material Location</b>	<b>Associated Pollutants</b>	<b>Stormwater Exposure Pathway</b>
Lab Analysis	.02N Iodine	10gal	liquid	red winery lab	Toxic Chemicals	Shipping and receiving within exterior red wine crush area
Lab Analysis	1+3 Sulfuric Acid	10gal	liquid	red winery lab	Toxic Chemicals	Shipping and receiving within exterior red wine crush area
Load Unload	Pallets of Wine	500	Cardboard, glass, cork	white winery	Organics , sediment, TSS, etc	Loaded and unloaded in covered shipping and receiving area
Winemaking	Glycol	500gal	liquid	white and red winery	Organics, Toxic chemicals	Stored in water tight tanks stored at Glycol skid #1 and #2
Storage	Facilities Waste/Recycling	50 yards	garbage	red winery	Organics , sediment, TSS, etc.	Stored in water tight containers in garbage storage area